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MISCELLANY.

BAR EXAMINATION.

Wytheville, Virginia, June 18, 1909.

1. What is law in its most comprehensive sense? What is municipal law, and why is it called a rule of action; why called a rule of civil action?

What is an *ex post facto* law, and to what may it apply? What is a retrospective law? In what light are such laws regarded, and are they ever to be presumed as retroactive when the words will admit of another construction? Give reasons for your answer.

2. In what cases do foreign laws prevail in our own tribunals? What is the *lex loci contractus*? What the *lex rei sitae*? What the *lex fori*? Give an instance of each.

3. What is the usual covenant for title in this State, and what are the objections to it? If a grantee loses his land by reason of superior title, what is the measure of his recovery under a covenant of general warranty? What under a covenant of special warranty?

4. When and in what courts may the lands of infants be sold for re-investment? State who must be complainant, who defendants; what allegations the bill must contain; who must answer, and how.

5. What is a remainder? Give its essential characteristics and an example of a vested and of a contingent remainder. What are executory limitations and within what time must they vest? When estates are determined by executory limitations, what effect does that determination have upon curtesy and dower?

6. What is an estate of joint tenancy; of cotenancy; of coparcenary? Give the leading characteristics of each, and state which arises by act of the parties and which by the act of the law.

7. In 1845 A conveyed a tract of land to B and his wife. In 1854 B conveys a right of way through the land to a railroad company, his wife not uniting in the deed. The railroad company at once takes possession, constructs its road, and is in possession of the right of way in the year 1897. when B dies. His widow advises with you as to her rights. State what your advice would be and reasons for it. Can she recover the right of way from the railroad company, and if so, by what action?

8. A devises a tract of land to B for life and at his death to his children. B has eleven children, four of whom die without issue under twenty-one years of age. One child, C, after arriving at the age of maturity, settles all his property upon his wife and dies without issue before his father, who dies insolvent, leaving six children and a widow surviving him. What are the rights of B's creditors, his widow surviving children and the widow of C in the land?

9. A executes a deed of trust on his land to secure the payment of a debt due B. Afterwards A sells and conveys a portion of same land to C and subsequently conveys another portion to D. Before purchasing D gets B to release that portion of the land purchased by him (D) from the lien of the deed of trust. All the deeds were properly recorded. The proceeds of the residue of the trust lands are not sufficient to pay B's debt. Can B enforce his deed of trust upon the lands purchased by C, having released the lands subsequently purchased by D? Give reasons for your answer.

10. A verbally authorizes B to sell a tract of land. B enters into a written contract with C for the sale of the land as agent of A and signs A's name to the writing. D by a power of attorney authorizes E to sell his farm. E by a verbal contract sells it to F. Can either contract be enforced? If so, which and why?

11. Within what time and how may a judgment by default be corrected? What defenses may be made to a forthcoming bond given upon a distress warrant for rent? What when it is given on a *feri facias*?

12. Define (a) Evidence; (b) Direct Evidence; (c) Primary Evidence; and (d) Secondary Evidence.

13. A city authorizes a citizen to dig a ditch across a sidewalk to connect with a sewer, on condition that he keep the ditch guarded by day and lighted by night till completed. He employs an independent contractor to do the work. The contractor neglects to light the ditch by night and a pedestrian is injured in consequence thereof. He sues the city for damages. What should be the judgment?

14. Owing to the negligence of a telephone operator, a train is wrecked, a passenger is injured, and an express package is lost. The company sues the operator for the loss of its cars, the passenger sues him for the injury to him, and the owner of the package for its loss. What should be the judgment in each case, and why?

15. What is the period in Virginia within which action may be brought upon a written contract under seal, a verbal contract, a retail store account, and a tort, respectively?

16. Explain the common counts at common law, and also in Virginia, in an action of *assumpsit*; and what may and may not be proved under the general issue of *non assumpsit*? State the several cases in which an attachment in an action at law may be obtained; and how are attachment statutes construed, and why?

17. In what manner may a judicial lien be obtained upon the lands, and also upon the chattels of a debtor; from what time would such lien be effective (a) as between creditor and debtor; (b) as to other creditors who might be proceeding in like manner; and (c) as to purchasers?

18. State the reason of the rule which requires a plea amounting to

general issue to be so pleaded; and in what cases and in what manner may defendant be compelled to disclose grounds of his defence when he pleads the general issue?

19. Shortly after his marriage, a will is made by a man leaving his entire estate to his wife and directing that his wife shall be sole beneficiary, notwithstanding the birth of any child or children. Two children are born of the marriage and testator dies. What are the rights of widow and children in the estate?

20. What constitutes eviction of a tenant, and what is the effect of eviction upon rent due and rent to become due? Also state liability of landlord and tenant, respectively, for repairs where contract is silent on the point, and what is measure of landlord's liability where he covenants to make certain repairs and by reason of his failure to do so damage ensues. Suppose, for instance, he contracted among other things to repair a gate, and by reason of his failure to do so a neighbor's cattle get in upon tenant's wheat and destroy it?

21. In what cases may process be served on a defendant in a county other than that in which suit is instituted? State whether or not process may be served during rules to which it is returnable; and how may process be executed if defendant is not found by the officer at his usual place of abode?

22. What is period of limitation upon enforcement of open account, retail store account, promissory note, single bill and judgment? What disabilities stop running of statute of limitation and for how long?

23. What notice must be given by a partner after dissolution of firm in order to avoid future liability for contracts of co-partner? Suppose after dissolution one partner signs notes in partnership name, what is liability of co-partner on notes thus signed, if they were given in renewal of notes made while partnership was in existence?

24. How can owner of suburban property dedicate roads and streets for benefit of public, and how and under what circumstances can dedication be withdrawn? Can vendee of tract of land who purchases by the acre be made to pay for so much of the land as is occupied by public highway?

25. X, a married woman, owns \$5,000 of realty acquired from her father in 1874; \$10,000 in stocks and bonds, acquired in 1885; and a large number of horses and cattle worth \$5,000, purchased in 1896. She has contracted debts to the extent of \$25,000 since her marriage, which took place in 1895. Which of her property can be subjected to the payment of her debts, and how must the creditors proceed?

26. A sells to B a race horse for \$1,000 cash. B discovers a few days after the purchase of the horse that in a recent race it had been so injured as to disqualify it for the race-course but not for ordinary

purposes, which injury was not patent but was known to A, who concealed it from B when selling the horse to him: What are B's remedies against A, and the measure of recovery according to the remedy he elects to adopt?

27. A, a dealer in leaf tobacco, shows to B his tobacco hanging in his warehouse, and B agrees to buy of him 100,000 pounds at 10 cents per pound, and to pay for the same as soon as the tobacco is prized, weighed and marked by A. A prizes the tobacco and sets the hogsheads apart for B, but before he has weighed and marked them his warehouse catches on fire and all the tobacco is consumed: Who must bear the loss, A the seller, or B the buyer?

28. A, an attorney, writes to B, against whom he has brought suit, offering to compromise, but telling B that the offer is subject to the approval of his client, C. B replies at once, accepting the offer unconditionally. A secures his client's approval, but tells B nothing of it. Subsequently, and before notification of C's approval, B writes withdrawing his acceptance of the offer. C attempts to hold B. Can he do so?

29. A, a selling agent for a carriage manufacturer, sells a carriage to B, guaranteeing it for ten years. B gives his six months' note in payment, and the carriage is delivered. A had no authority to make the ten-year guarantee, and the manufacturer notifies B. after the sale, that he will not be bound by it. B resists the payment of the note on this ground, offering to return the carriage, and suit is brought. Can the manufacturer recover?

30. A sells to B 10 acres of land and puts B in possession of it, upon which B erects buildings and other improvements, but there is no conveyance of the land to B, only a contract in writing setting forth that A will convey the land to B when paid for at a stipulated price, and before B gets his deed or records the same D obtains a judgment against B and docket it in the county in which the land is situated: Can D have satisfaction of his judgment out of this land to the exclusion of A's rights? How if B has paid for the land and D's judgment is against A and docketed in the clerk's office of the county in which the land is situated before B gets his deed or records it?

31. Judgment is obtained against a corporation for \$500 by B and the corporation has no property. but there are \$10,000 in unpaid subscriptions to the stock of the corporation which were taken by solvent people: Can these stock subscriptions be subjected to the payment of B's judgment, and if so, how?

32. Upon whom must process commencing a suit against a corporation be executed, and what must the return of the officer show?

33. Discuss the doctrine as to specific performance of contracts for sale of real estate. How about specific performance of contract for

personal services, and what relief can be given in such cases by the courts?

34. What is the law as to admissibility in criminal case of testimony given on former trial by witness since deceased; and as to introduction of evidence by deposition in favor of Commonwealth or the defendant in criminal case? When may depositions be taken in civil case?

35. What is the office and effect of a demurrer, and when should it be interposed to a pleading? What does it admit, and what does it not admit?

36. Define crime. How are criminal offenses divided? What constitutes a felony and what a misdemeanor?

37. How many kinds of homicide are there? Give an illustration of each. When is the killing of a person justifiable and when excusable?

List of Successful Applicants.

Out of a class of one hundred and thirty-one taking the bar examination at Wytheville June 18, ninety-seven passed and thirty-four failed. Following is a list of those successful:

All, Ernest L.....	Allendale, S. C.
Anderson, H. L.....	Charlottesville, Va.
Andrews, J. B., Jr.....	Charlottesville, Va.
Bain, Claude Murrough.....	Norfolk, Va.
Bowen, Oscar L.....	Richmond, Va.
Bowles, Drewry W., Jr.....	Richmond, Va.
Bowman, Alpheus M., Jr.....	Salem, Va.
Bolling, Albert S.....	Charlottesville, Va.
Bremner, Leith S.....	Atlee, Va.
Bronson, William S.....	Richmond, Va.
Brown, Robert Allen.....	Wytheville, Va.
Buford, Warren Bruce.....	Roanoke, Va.
Byrd, John Abbott.....	Metomkin, Va.
Cary, Charles Irving.....	Hague, Va.
Caskie, James R.....	Lynchburg, Va.
Chalmers, David T.....	Alexandria, Va.
Chewning, A. J., Jr.....	Richmond, Va.
Clarke, Harold H.....	Alexandria, Va.
Cruser, Melvyn Ellison.....	Norfolk, Va.
Damron, Harris Cole.....	Covington, Va.
Davis, Cornelius Carter.....	Lexington, Va.
Davis, Robert Beale, Jr.....	Petersburg, Va.
Denny, James Blaine.....	Lexington, Va.
Flory, Ira Samuel.....	Nokesville, Va.

Fourl, Chas. Wilson.....	Charlottesville, Va.
Gaines, Wm. Harris.....	Warrenton, Va.
Gilmer, Albert Gray.....	Pulaski, Va.
Goodwin, D. P.....	Hollywood, Cal.
Graves, Henry L.....	Decatur, Ga.
Griffith, Arthur T.....	Honaker, Va.
Hart, Clayton I.....	Roanoke, Va.
Heflin, James Otho.....	Colonial Beach, Va.
Hobbs, Thomas Gibson.....	Saltville, Va.
Holland, Lee Pretlow.....	Suffolk, Va.
Hooe, Rice.....	Washington, D. C.
Hooker, Henry Lester.....	Stuart, Va.
Hubbard, Jas. N.....	Wilcox Wharf, Va.
Hudson, McKnight.....	Greenbackville, Va.
Hutcheson, Robert.....	Charlottesville, Va.
Hutzler, Alvin Bryant.....	Richmond, Va.
Irving, Lewis H.....	Amelia, Va.
Jeffress, Robert Miller.....	Richmond, Va.
Jesse, Charles T.....	Bowling Green, Va.
Jester, Royston, Jr.....	Lynchburg, Va.
Landreth, S. Floyd.....	Hillsville, Va.
Leatherbury, Chas. Neely.....	Norfolk, Va.
Lewis, Geo. Washington.....	Berryville, Va.
Lindsey, Winston S.....	Berryville, Va.
Lowry, Harold Lewis.....	Richmond, Va.
McNair, A. W.....	Norfolk, Va.
Martin, Stephen Duval.....	Lynchburg, Va.
Meeks, Wm. Edward.....	Massie's Mill, Va.
Minter, Charles Stamps.....	Pocahontas, Va.
Morris, T. C.....	South Boston, Va.
Nash, John.....	Portsmouth, Va.
Ozlin, T. W.....	Eanes Crossroads, Va.
Painter, G. C.....	University of Virginia.
Payne, Norman Guy.....	Madison, Va.
Pense, Hensell E.....	Mt. Crawford, Va.
Peyton, Wm. Snyder.....	Charlottesville, Va.
Pitts, A. L., Jr.....	Arvonias, Va.
Price, James H.....	Staunton, Va.
Pyle, Thomas Myron.....	Charlottesville, Va.
Ragland, Reuben.....	Petersburg, Va.
Ratcliffe, Glen.....	Grundy, Va.
Rawley, Johnson Heath.....	Richmond, Va.
Ricks, James Hoge.....	Richmond, Va.
Robinette, Lloyd M.....	Blackwater, Va.
Runyon, C. V.....	Clarksville, Tenn.

Russell, Charles C.....	Richmond, Va.
Sargent, Francis Sheldon.....	Norfolk, Va.
Scott, Edgar B.....	Norfolk, Va.
Shaughnessy, F. J.....	Roanoke, Va.
Shewmake, Oscar L.....	Newport News, Va.
Skaggs, Erastus E.....	Pennington Gap, Va.
Snapp, James P.....	Jacksonville, Fla.
Snellings, Shirley T.....	Norfolk, Va.
Stedman, Beirne.....	Stuart, Va.
Stephenson, Jno. W.....	Warm Springs, Va.
Surber, Edward Marshall.....	Newcastle, Va.
Taliaferro, Chas. Champe, Jr.....	Orange, Va.
Tayloe, George Ogle.....	Hopyard, Va.
Thom, Alfred P.....	Washington, D. C.
Thorp, Roland Fitz Robert.....	Norfolk, Va.
Tiffany, Walker Jordan.....	Middleburg, Va.
Turnbull, Nathaniel.....	Lawrenceville, Va.
Ware, Samuel Denton.....	Purnley, Va.
Warren, George Marvin.....	Emory, Va.
Webster, Charles.....	Norfolk, Va.
Wellford, James M.....	Richmond, Va.
Widener, Hiram Emory.....	Abingdon, Va.
Willcox, Thomas Hamlin.....	Norfolk, Va.
Williams, Robert.....	Philadelphia, Pa.
Wilson, Thomas J.....	Clifton Forge, Va.
Wingo, John Trevilian.....	Richmond, Va.

Violation of Sherman Act by Corporation.—We publish the following from the Central Law Journal upon the question, "Can a corporation whose organization violates the inhibitions of the Sherman Act enforce its contracts?" The latter of these two cases will be found in "Notes of Cases" in June number, 15 Va. Law Reg. p. 168. See also Editorial Comment in 14 Va. Law Reg. 891.

Just now the law on this question is passing through a great period of transition and the provisions of the Sherman Act in the meanwhile have become somewhat uncertain as to the full extent of their operation and the exact limit of their effectiveness. We welcome, therefore, each decision of the supreme court which effectually determines any of the perplexing situations so often met with in applying the terms of this statute.

Section seven of the Sherman Act provides that any person injured in his business or property by any other person or corporation by reason of anything forbidden or declared to be unlawful may sue therefor in the Circuit Court of the United States and recover threefold the damages sustained by him. The question arises under this

section and the two preceding sections, making illegal monopolies and combinations in restraint of trade,—Shall a corporation whose scheme of organization comes within the meaning of these inhibitions, enforce whatever contracts it may make either in pursuance of or as an aid to the unlawful combination or not?

The case of *Connolly v. Union Sewer Pipe Co.*, 184 U. S. 540, 22 Sup. Ct. 431, held that the sections of the Sherman Act to which we have just referred, while they rendered void any contract or combination which was in restraint of trade, did not invalidate any incidental contract for the sale of goods which did not in any manner involve as a necessary incident in proving the contract or explaining its terms, the illegal combination or contract itself. In this case the purchaser resisted the attempt to recover for a shipment of sewer pipe which he had ordered, received and agreed to pay for. The court said: "The buyer could not refuse to comply with his contract of purchase upon the ground that the seller was an illegal combination which might be restrained or suppressed in the mode prescribed by the act of congress; for congress did not declare that a combination illegally formed under the act of 1890 should not, in the conduct of its business, become the owner of property which it might sell to whomsoever wished to buy it. So that there is no necessary legal connection here between the sale of pipe to the defendants by the plaintiff corporation and the alleged arrangement made by it with other corporations, companies, and firms. The contracts under which the pipe in question was sold were, as already said, collateral to the arrangement for the combination referred to, and this is not an action to enforce the terms of such arrangement."

Now comes the important recent case of *Continental Wall Paper Co. v. Voight*, 29 Sup. Ct. 280, which holds to an apparently contrary doctrine, but where the distinction is sought to be made between simple transactions in the ordinary course of business and accounts which are made up, within the knowledge of both buyer and seller, with direct reference to, and in execution of, the agreements which constitute the illegal combination. The answer in this case in resisting a recovery on an account for goods sold and delivered set up not only that the plaintiff was an illegal combination of the wall paper manufacturers of the United States, but also that, in carrying out such combination, defendants were virtually compelled to sign a jobber's agreement which, in effect, bound them to buy from the plaintiff all the wall paper needed in their business at certain fixed prices, and not to sell at lower prices or upon better terms than those at which plaintiff itself sells to dealers other than jobbers, that the goods in question were ordered pursuant to such agreement and at the prices fixed, that such prices were unreasonable, and that all the transactions between the parties were in furtherance of the illegal combination.

The distinction which Justice Harlan, speaking for a bare majority of the court, makes between the two cases is simply this: In the Connolly case there was a simple contract of sale untainted by any other considerations, and having no relation to the illegal combination which the vendor had made with other vendors. In the Continental Wall Paper Case, on the other hand, the defendant was a jobber who, in order to make this particular purchase, had been compelled to enter into an agreement to purchase exclusively of plaintiff and to sell at a certain price and to do other things which were in furtherance of the execution of the illegal combination or contract between plaintiff and subsidiary companies. Justice Harlan says: "The plaintiff comes into court admitting that it is an illegal combination whose operations restrain and monopolize commerce and trade among the states, and asks a judgment that will give effect, as far as it goes, to agreements that constituted that combination, and by means of which the combination proposes to accomplish forbidden ends. We hold that such a judgment cannot be granted without departing from the statutory rule, long established in the jurisprudence of both this country and England, that a court will not lend its aid, in any way, to a party seeking to realize the fruits of an agreement that appears to be tainted with illegality, although the result of applying that rule may sometimes be to shield one who has got something for which, as between man and man, he ought, perhaps, to pay, but for which he is unwilling to pay. In such cases the aid of the court is denied, not for the benefit of the defendant, but because public policy demands that it should be denied without regard to the interests of individual parties."

It must be admitted that the argument of Justice Harlan hews very close to the line. At first glance it is difficult to perceive the necessary connection between the defendant's several purchases of wall paper and the agreement to keep up prices and to trade with plaintiff to the exclusion of plaintiff's competitors. These transactions look to be quite separate and distinct and the situation therefore would appear to justify the position of the four dissenting judges, speaking through Mr. Justice Holmes, in declaring that "if knowledge that the plaintiff was attempting to monopolize, and that it sold at prices fixed in aid of the intent, would not exonerate the defendant when it yielded to its necessities and bought, the same knowledge would have no greater effect if the same necessities led it to agree beforehand to do what it did."

We are not prepared, however, to assent to the contention of Justice Holmes that "the policy of not furthering the purposes of the trust is less important than the policy of preventing people from getting other people's property for nothing when they purport to be buying it." This is the attitude which has hitherto prevented the effective enforcement of the Sherman Act and we are inclined to com-

mend the attitude of the majority of the court in firmly discountenancing such a policy and in its stead to declare that it is better to let an illegal trust lose its goods without redress than for the court to aid it in enforcing its program of combination in any of its various aspects.

We commend the opinion of the court in the case of *McMullen v. Hoffmann*, 174 U. S. 639, where the court declared, speaking of the policy which refuses to enforce contracts in any way tainted with illegality: "The more plainly parties understand that when they enter into contracts of this nature, they place themselves outside the protection of the law, so far as that protection consists in aiding them to enforce such contracts, the less inclined will they be to enter into them. In that way the public secures the benefit of a rigid adherence to the law."

IN VACATION.

"Fairness of a Horse Swap Is Peculiarly a Question for a Jury of the Vicinage."—In *Sykes v. Sutton*, 3 Ga. App. 204, it is said: "We have read with much interest and attention the evidence in the record, and we must admit that we are not fully in accord with the jury in our conclusion from the facts. But the fairness of a horse swap is peculiarly a question for a jury of the vicinage. The character and abilities of the respective 'swappers,' as well as the temptations inherent in such transactions, and to what extent excusable, are largely ethical questions; far better understood by the jurors on the ground than by reviewing courts at a distance. To our uninitiated mind it seems that the old horse trader with ten years' experience in his special line got somewhat the best of the youthful novice. At the conclusion, the old trader had both horses, and a judgment against the adolescent novice for \$44.20 principal, interest, and costs. This result evinces great skill and finesse on the part of the experienced client and his able attorneys. It is a little puzzling to those who do not understand the mysteries of horse trades and jury trials. But the charge of the court in the main was fair, accurate, and comprehensive, clearly covering all the material issues in the case. The disconnected excerpts, when considered in connection with the entire charge, contain no serious or harmful error. This court will not have the judicial temerity to permit its conclusion to crystalize into judicial opinion at variance with that of the jury on the facts in connection with a horse trade, about which they were, by reason of propinquity to the parties and witnesses and to the scene of action, the better judges."